

COMMONWEALTH OF VIRGINIA  
STATE CORPORATION COMMISSION  
AT RICHMOND, DECEMBER 21, 2022

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APPLICATION OF

APPALACHIAN POWER COMPANY

CASE NO. PUR-2020-00015

For a 2020 triennial review of its base rates,  
terms and conditions pursuant to § 56-585.1  
of the Code of Virginia

ORDER ON REMAND

On March 31, 2020, Appalachian Power Company ("APCo" or "Company") initiated the instant docket by filing its "triennial review" application for the years 2017-2019 ("Application"). Pursuant to Code § 56-585.1 A 8, the "Commission's final order regarding such triennial review shall be entered not more than eight months after the date of filing."

On November 24, 2020, after a full evidentiary proceeding on APCo's triennial review Application, the State Corporation Commission ("Commission") issued a Final Order in this docket.

On November 25, 2020, APCo filed a Notice of Appeal of the Final Order.

On December 14, 2020, APCo filed a Petition for Reconsideration of the Final Order, and the Office of the Attorney General, Division of Consumer Counsel ("Consumer Counsel") filed a Petition for Reconsideration, Clarification, and Rehearing.

On December 15, 2020, Consumer Counsel filed a Notice of Appeal of the Final Order.

On March 26, 2021, the Commission issued an Order on Reconsideration.

On April 2, 2021, Consumer Counsel filed an updated Notice of Appeal. APCo filed an updated Notice of Appeal on April 5, 2021.

On August 18, 2022, the Supreme Court of Virginia issued an opinion that affirmed in part and reversed in part certain contested rulings in this matter, and that remanded the case for further proceedings consistent with the Court's opinion.<sup>1</sup>

On August 22, 2022, the Commission issued an Order Initiating Remand Proceedings, which directed as follows:

(1) On or before September 23, 2022, the participants that previously submitted an earnings test and going-forward revenue requirement may each submit a *revised* earnings test and going-forward revenue requirement for the Rate Year beginning January 1, 2021. Such shall be based on the established evidentiary record in this case and the participant's stated positions in this proceeding on going-forward adjustments as of the date of the Order on Reconsideration. The proposed revenue requirements shall reflect the Court's rulings in the above-referenced opinion and shall be based on the 9.20% return on equity approved in the Final Order. Each participant's filing shall include brief testimony (including a one-page summary) with supporting schedules, explaining the changes necessary to reflect the participant's proposed revised revenue requirement.

(2) On or before September 23, 2022, [APCo] shall file proposed interim rates for (a) base rates going forward, and (b) a rider designed to collect revenues not collected from January 1, 2021, through September 30, 2022. The Company shall implement such interim rates beginning October 1, 2022. The interim rates shall be subject to Commission review and potential refund, and may be adjusted by further Commission order(s) in these remand proceedings.

(3) On or before September 23, 2022, the Company, the Commission's Staff, and any party choosing to participate in these remand proceedings shall submit a combined issues matrix on the outstanding disputed going-forward issues as of the close of the evidentiary record in the underlying case, adjusted for the rulings in the Court's opinion. No new positions shall be submitted regarding earnings test adjustments, going-forward accounting adjustments, or rate design.

(4) These remand proceedings are limited to conducting a going-forward rate year review in accordance with the Court's directive. Accordingly, no further information is to be filed on the earnings tests reviewed and ruled upon in the underlying proceedings and subsequent appeal, with the exception of adjustments necessary to incorporate the Court's rulings and calculate the going-forward revenue requirement.

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<sup>1</sup> *Appalachian Power Co. v. State Corp. Comm'n*, \_\_\_ Va. \_\_\_, 876 S.E.2d 349 (2022).

On September 23, 2022, the Company, the Staff of the Commission ("Staff"), and Consumer Counsel each filed revised going-forward revenue requirements, along with supporting testimony. In addition, the Company, Consumer Counsel, Staff, VML/VACo APCo Steering Committee ("VML/VACo"), and Old Dominion Committee for Fair Utility Rates ("Committee") filed a combined issues matrix setting forth the participants' positions on the issues remanded to the Commission by the Court.

On September 30, 2022, the Commission issued an Order assigning this matter to a Hearing Examiner as follows:

[The] Hearing Examiner [shall] conduct further proceedings in this matter, including preparation of a report containing the Hearing Examiner's findings and recommendations. These proceedings shall be limited to a going-forward rate year review in accordance with the Court's directive. No evidence is to be considered on the earnings tests reviewed and ruled upon in the underlying proceedings and subsequent appeal, apart from adjustments necessary to incorporate the Court's rulings and calculate the going-forward revenue requirement.<sup>2</sup>

On November 2, 2022, Commission Hearing Examiner D. Mathias Roussy, Jr., convened an evidentiary hearing on remand. The Hearing Examiner issued his Report in this matter on November 17, 2022, and on November 28, 2022, issued an Errata thereto (collectively, "Report").

On December 1, 2022, comments on the Report were filed by: APCo; Consumer Counsel; VML/VACo; the Committee; Virginia Poverty Law Center ("VPLC"); Appalachian Voices; and Staff.

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<sup>2</sup> Order at 2.

NOW THE COMMISSION, upon consideration of this matter, is of the opinion and finds as follows.<sup>3</sup>

### Hearing Examiner's Report

After analyzing the law and weighing the evidence – and providing a thorough and detailed analysis thereof – the Hearing Examiner made the following recommendations:<sup>4</sup>

Accordingly, I RECOMMEND the Commission enter an order that:

1. *FINDS* the Company earned a 7.945% combined rate of return on common equity for the 2017-2019 triennial review period;
2. *APPROVES* a going-forward revenue requirement increase of \$28.4 million for APCo's base generation and distribution rates, which includes deferred recovery of the statutory regulatory asset amortized over three years;
3. *DIRECTS* APCo to file revised tariffs reflecting a \$28.4 million going-forward revenue requirement increase for base generation and distribution rates;
4. *GRANTS* conditional approval of a revised Rider R.C.R. that: (a) reflects a \$28.4 million going-forward base rate revenue requirement increase; (b) removes from its actual revenue baseline any revenues from January 1, 2021, through January 22, 2021; (c) updates the estimate of September 2022 revenues to actual revenues for the actual revenue baseline; and (d) includes tariff language indicating that Rider R.C.R. automatically resets to zero upon reaching the amount targeted by the rider;
5. *CONDITIONS* approval of the revised Rider R.C.R. on a requirement for the Company to impute all Rider R.C.R. revenues into the 2021 and 2022 earnings test; and/or *MAINTAINS* the revised Rider R.C.R. as an interim rate subject to refund until the Commission has completed the earnings test in the upcoming triennial review;
6. *DIRECTS* customer refunds of base rate and Rider R.C.R. recoveries from interim rates exceeding the revised tariff rates approved by the Commission; and

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<sup>3</sup> The Commission has fully considered the evidence and arguments in the record. *See also Board of Supervisors of Loudoun County v. State Corp. Comm'n*, 292 Va. 444, 454 n.10 (2016) ("We note that even in the absence of this representation by the Commission, pursuant to our governing standard of review, the Commission's decision comes to us with a presumption that it considered all of the evidence of record.") (citation omitted).

<sup>4</sup> Report at 26 (emphases in original).

7. *DIRECTS* Staff to ensure the revised rates filed by APCo comply with this order, including verification of the Rider R.C.R. calculations and the underlying actual revenues.

Upon consideration of this matter, the Commission concludes that the Hearing Examiner's rulings, findings, and recommendations are supported by law and the evidence, have a rational basis, and are adopted herein.<sup>5</sup> In addition, the Commission further discusses below its findings for purposes of this remand proceeding.

#### Triennial Review Proceeding

As part of the triennial review proceeding, the Commission was required to determine the Company's reasonable earned return for the 2017-2019 historical three-year period. To do this, the Commission must approve reasonable *costs* for 2017-2019.<sup>6</sup> If the Commission finds that APCo's revenues during that period were insufficient to recover reasonable costs by a statutorily-prescribed amount, then the statute requires a going-forward rate increase as necessary for the purposes stated therein.<sup>7</sup> As dictated by this statutory scheme, in the triennial review proceeding the Commission received evidence and argument on both historical (2017-2019) and future (for purposes of setting going-forward rates, if necessary) revenues and expenses.

#### *Commission*

APCo's historical expenses for 2019 included an asset impairment charge of \$88.3 million for power plant closures in 2015. The Commission found that this asset

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<sup>5</sup> See Report. In so doing, the Commission has made a factual finding on each going-forward rate issue.

<sup>6</sup> Final Order at 2-4.

<sup>7</sup> *Id.* at 3; Code § 56-585.1 A 8 a.

impairment expense was unreasonable.<sup>8</sup> As a result of this finding, the Company had sufficient revenues to recover its *reasonable* costs under the statute. Thus, the Final Order did not include findings necessary to approve a change in rates on a going-forward basis.

*APCo*

APCo appealed the Commission's decision to the Supreme Court of Virginia. On appeal, the Company did not contest the Commission's conclusion that the \$88.3 million asset impairment cost was *unreasonable*. Rather, APCo claimed that the General Assembly has removed the Commission's authority to reject this asset impairment charge, even if it is unreasonable.<sup>9</sup>

*Supreme Court of Virginia*

The Court, in turn, did not find that the \$88.3 million asset impairment cost was reasonable. Rather, the Court agreed with the Company and held that Code § 56-585.1 A 8 removes the Commission's authority to protect customers from an unreasonable asset impairment cost in this instance.<sup>10</sup>

In other words, as discussed by the Hearing Examiner, the Court found that the statute required the Commission to accept this charge as part of the 2017-2019 triennial review

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<sup>8</sup> Final Order at 5-12; Order on Reconsideration at 6-19. *See also* Remand Tr. at 1287 (Consumer Counsel); Consumer Counsel's Remand Comments at 1 ("Consumer Counsel's witness described this accounting maneuver to be 'unconscionable' in the context of its effects on customers' cost-of-service.") (citation omitted).

<sup>9</sup> *See, e.g., Appalachian Power Co.*, \_\_\_ Va. at \_\_\_, 876 S.E.2d at 357, 359.

<sup>10</sup> *Id.*, \_\_\_ Va. at \_\_\_, 876 S.E.2d at 359-360, 365.

proceeding, regardless of whether it was reasonable.<sup>11</sup> The Hearing Examiner further noted that the Court understood this outcome and its potential impact on rates.<sup>12</sup>

In sum, the Court found the Commission made an *error of law* in denying this charge and remanded the case to the Commission "for further proceedings consistent with this opinion."<sup>13</sup>

#### Remand Proceeding

As a result, the purpose of this remand proceeding is for the Commission to revise its final decision for APCo's 2017-2019 triennial review in a manner that faithfully implements the statutory requirements, given that the Commission's rejection of the \$88.3 million asset impairment cost has been declared improper by the Court as a matter of law.

In this regard, it is uncontested that the Court's reversal of the Commission's finding lowers APCo's earned return for 2017-2019 such that the Commission "shall order *increases to the utility's rates* necessary to provide the opportunity to fully recover the costs of providing the utility's services and to earn not less than such fair combined rate of return, using the most recently ended 12-month test period as the basis for determining the amount of the rate increase necessary."<sup>14</sup>

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<sup>11</sup> Report at 1 n.1.

<sup>12</sup> *Id.* at 1 n.2 (quoting *Appalachian Power Co.*, \_\_\_ Va. at \_\_\_, 876 S.E.2d at 372 (Mims, S.J., and Powell, J., dissenting) ("The majority's holding also takes away the Commission's ability to protect rate payers from potentially unreasonable accounting practices that will result in rate increases. Now that [APCo] will be permitted to allocate all the asset impairment costs for the retired units in 2019, [APCo]'s earnings for the triennial review period will be lowered to such an extent that the Commission will be required to conduct a going-forward rate case and [APCo] will be entitled to raise its rates.").

<sup>13</sup> *Appalachian Power Co.*, \_\_\_ Va. at \_\_\_, 876 S.E.2d at 370.

<sup>14</sup> Code § 56-585.1 A 8 a (emphases added). *See also* Report at 8.

### *Implementation*

As discussed above, the Commission is required to implement the Court's partial reversal for purposes of APCo's 2017-2019 triennial review proceeding, which requires approval of the \$88.3 million asset impairment cost. If the Commission had not rejected this cost, the Final Order – issued within the statutory deadline therefor – would have included findings on contested ratemaking issues necessary to establish new rates on a going-forward basis in accordance with the statute. Furthermore, those findings would have been based on the fully litigated record developed during the triennial review proceeding for that very purpose.

That is precisely what we have done herein. The purpose of the instant remand is to correct the legal error as held by the Court, not to relitigate issues that have already been fully litigated for the 2017-2019 triennial review. Thus, in correcting the legal error on remand, the Commission has reasonably rejected requests to reopen the record for purposes of relitigating contested going-forward ratemaking issues, which all parties already had a full opportunity to litigate in the triennial review proceeding. Similarly, the Commission has also reasonably rejected requests to include new evidence that came into being *after* the statutory timeframe for the 2017-2019 triennial review proceeding.

Next, as recommended by the Hearing Examiner, the Commission has also ordered additional requirements herein (including Rider R.C.R.), which are necessary to implement the resulting rate increase in a manner that reasonably effectuates the outcome that would have occurred if such rate increase had been approved during the statutorily prescribed timeframe of the 2017-2019 triennial review proceeding. The Commission concludes that the Court would not

consider this outcome to be illegal "retroactive ratemaking." Quite to the contrary, it is necessary to correct the legal error as mandated by the Court.<sup>15</sup>

Finally in this regard, and consistent with the approach above, the Commission agrees with the Hearing Examiner that if the instant rate increase was included in the Final Order, it would have been made effective 60 days thereafter (*i.e.*, January 23, 2021), and that such date shall be utilized for calculating the revenue increase approved herein.<sup>16</sup> In addition, as also discussed by the Hearing Examiner, the Commission finds that to prevent potential double-recovery (among other things): (1) the Company shall impute all Rider R.C.R. revenues into the 2021 and 2022 earnings test; (2) Rider R.C.R. shall remain subject to refund until the Commission has completed the earnings test for 2021 and 2022; and (3) the Company shall modify the Rider R.C.R. tariff to provide that it automatically resets to zero upon reaching the amount targeted by such rider.<sup>17</sup>

#### *Rate Increase*

Consumer Counsel, VML/VACo, the Committee, VPLC, and Appalachian Voices all expressed serious concerns about further raising customers' rates, especially given the other rate increases APCo's customers have recently experienced under various statutory rate mechanisms.<sup>18</sup> The Commission shares these concerns about the very real impacts these rate increases have on APCo's customers. Indeed, as explained above, the Commission's rejection of

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<sup>15</sup> The Commission also rejects claims that this may violate notice requirements. Rather, as explained by the Hearing Examiner, the "total revenues that APCo proposes on remand are less than the total revenues that the noticed rates proposed by the Application would have produced over the relevant period." Report at 23.

<sup>16</sup> *Id.* at 23-24. To the extent argued that this conflicts with the Commission's Order Initiating Remand Proceedings, we have explicitly adopted the Hearing Examiner's findings and recommendation thereon.

<sup>17</sup> *Id.* at 24-25.

<sup>18</sup> *See, e.g.*, Remand Tr. at 1287, 1270, 1278, 1273, and 1276, respectively.

an unreasonable asset impairment cost in the initial triennial review proceeding had the direct result of avoiding a further rate increase.

Finally, the rate increase requested by APCo on remand has been in effect on an interim basis, subject to refund, since October 1, 2022.<sup>19</sup> Those rates reflect APCo's requested rate increase, following the Supreme Court remand,<sup>20</sup> of \$40.6 million on an annual basis effective January 1, 2021.<sup>21</sup> Based on the Commission's findings herein (on issues for which the Commission still retains discretion), this annual rate increase has been *reduced* to \$28.4 million.<sup>22</sup> As a result, the instant Order on Remand necessitates that APCo refund amounts previously recovered on an interim basis in excess of this approval.<sup>23</sup> Compared to APCo's original request of \$65 million, the instant Order on Remand reduces the annual base rate increase by more than 50%.

Accordingly, IT IS ORDERED THAT:

- (1) The Commission adopts the Hearing Examiner's findings and recommendations as set forth herein.
- (2) The Hearing Examiner's recommendations, set forth herein, are hereby ordered.

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<sup>19</sup> Report at 21.

<sup>20</sup> In the Application, as originally filed, APCo requested a base rate increase of \$65 million. Ex. 1 (Application) at 9.

<sup>21</sup> Report at 4. The interim rates include both a going-forward rate increase commencing October 1, 2022, of \$40.6 million, plus Rider R.C.R. for recovery of uncollected revenues from January 1, 2021, to September 30, 2022, which is an additional \$54.1 million an annual basis. Ex. R135 (Castle) at 2. Rider R.C.R. will be in effect for 16 months commencing October 1, 2022.

<sup>22</sup> Report at 26.

<sup>23</sup> The Company may implement this refund as proposed. *See, e.g.*, Ex. R135 (Castle) at 4.

(3) The Company shall forthwith file revised tariffs and terms and conditions of service and supporting workpapers with the Clerk of the Commission and with the Commission's Divisions of Public Utility Regulation and Utility Accounting and Finance, as necessary to comply with the directives and findings set forth in this Order on Remand. The Clerk of the Commission shall retain such filing for public inspection in person and on the Commission's website: [scc.virginia.gov/pages/Case-Information](http://scc.virginia.gov/pages/Case-Information).

(4) The Company shall recalculate, using the rates and charges approved herein, each bill it rendered that used, in whole or in part, the rates and charges that took effect on an interim basis and subject to refund on October 1, 2022, and where application of the new rates results in a reduced bill, refund the difference with interest (as set out below) within ninety (90) days of the issuance of this Order on Remand.

(5) Interest upon the ordered refunds shall be computed from the date payments of monthly bills were due to the date each refund is made at the average prime rate for each calendar quarter, compounded quarterly, using the average prime rate values published in the Federal Reserve Bulletin or in the Federal Reserve's Selected Interest Rates (Statistical Release H. 15) for the three (3) months of the preceding calendar quarter.

(6) The refunds ordered herein may be credited to the current customers' accounts. Refunds to former customers shall be made by check or pre-paid credit card mailed to the last known address of such customers when the refund amount is \$1 or more. The Company may offset the credit or refund to the extent of any undisputed outstanding balance for the current or former customer. No offset shall be permitted against any disputed portion of an outstanding balance. The Company may retain refunds to former customers when such refund is less than

\$1; however, such refunds shall be made promptly upon request. All unclaimed refunds shall be subject to Code § 55.1-2512.

(7) Within sixty (60) days of completing the refunds ordered herein, the Company shall deliver to the Commission's Divisions of Public Utility Regulation and Utility Accounting and Finance a report showing that all refunds have been made pursuant to this Final Order and detailing the costs incurred in effecting such refunds and the accounts charged.

(8) The Company shall bear all costs incurred in effecting the refunds ordered herein.

(9) This matter is dismissed.

A COPY hereof shall be sent electronically by the Clerk of the Commission to all persons on the official Service List in this matter. The Service List is available from the Clerk of the Commission.